

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

CELINÉS QUILES-MARCUCCI, et al.,

Plaintiffs,

v.

COOPERATIVA DE AHORRO Y CRÉDITO
DE JUANA DÍAZ, INC.,

Defendant.

Civil No. 08-1913 (JAF)

O R D E R

Plaintiffs, Celinés Quiles-Marcucci, Oscar Guillermo Rosselló-Rodríguez, and the conjugal partnership between them, move for reconsideration of our Opinion and Order dated June 30, 2009 (Docket No. 38), which granted summary judgment to Defendant, Cooperativa de Ahorro y Crédito de Juana Díaz. (Docket No. 41.) Plaintiffs filed the instant motion on July 15, 2009 (id.), and Defendant opposed on July 27, 2009 (Docket No. 45).

Pursuant to Federal Rule of Civil Procedure 59(e), we entertain motions for reconsideration to (1) correct manifest errors of law or fact, (2) consider newly discovered evidence, (3) incorporate an intervening change in the law, or (4) otherwise prevent manifest injustice. See Marie v. Allied Home Mortgage Corp., 402 F.3d 1, 7 n.2 (1st Cir. 2005) (citing 11 Charles Allen Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2810.1 (2d ed.

Civil No. 08-1913 (JAF)

-2-

1 1995)). A Rule 59(e) motion "must be filed no later than 10 days
2 after the entry of the judgment." Fed. R. Civ. P. 59(e).

3 Plaintiffs challenge our holding with respect to their claims
4 for retaliatory discharge under the Americans with Disability Act and
5 the Age Discrimination in Employment Act. (Docket No. 41.) They claim
6 to have uncovered new evidence which shows that Defendant's excuse
7 for termination was pretextual. (See Docket Nos. 42, 48.) The new
8 evidence consists of a letter dated June 1, 2009, which Defendant
9 addressed to Natasha Torres-Lugo, an employee of Defendant who is
10 younger than Quiles-Marcucci. (Id.) Defendant notified Torres-Lugo
11 that her one-year leave period had expired on May 28, 2009. (Id.)
12 Defendant threatened to terminate Torres-Lugo for her continued
13 absence, but granted an additional ten days' grace period to return
14 that was not subject to extension. (Id.)

15 We are unswayed by this new evidence. "[P]retext can be
16 demonstrated through a showing that an employer has deviated
17 inexplicably from one of its standard business practices."
18 Kouvchinov v. Parametric Tech. Corp., 537 F.3d 62, 68 (1st Cir.
19 2008). At best, the letter shows only a minor deviation from
20 Defendant's treatment of Quiles-Marcucci, which was to terminate her
21 one month after the expiration of her one-year leave period. (Docket
22 No. 38, part III.B.3.) At worst, the letter confirms Defendant's
23 consistent practice of terminating employees after their statutory

Civil No. 08-1913 (JAF)

-3-

1 leave period, which undercuts Plaintiffs' theory for retaliatory
2 discharge. (See Docket Nos. 1, 22, 41.) As Defendant did not deviate
3 markedly from its normal practice, there is no basis to reject
4 Defendant's proffered excuse as pretextual. See Kouvchinov, 537 F.3d
5 at 68. Plaintiffs otherwise rehash arguments that we explicitly
6 treated in our Opinion and Order. (See Docket Nos. 22, 38, 41.) We,
7 therefore, find no reason to reconsider our judgment under Rule
8 59(e). See Marie, 402 F.3d at 7 n.2.

9 As an aside, we wish to clarify that our prior order did not
10 address any claims for discriminatory discharge on the basis of age
11 (Docket No. 38, part III.C.1), because Plaintiffs' complaint did not
12 allege such a cause of action. (See Docket No. 1.) Furthermore,
13 Plaintiffs could not establish such a claim as we had found that
14 Quiles-Marcucci was incapable of working at the time of her
15 termination (Docket No. 38, part III.B.1). See Arroyo-Audifred v.
16 Verizon Wireless, Inc., 527 F.3d 215, 218-19 (1st Cir. 2008) (holding
17 that plaintiff must prove that she "was qualified for her position").

18 For the reasons stated herein, we hereby **DENY** Plaintiffs' motion
19 for reconsideration (Docket No. 41).

20 **IT IS SO ORDERED.**

21 San Juan, Puerto Rico, this 31st day of August, 2009.

22 S/José Antonio Fusté
23 JOSE ANTONIO FUSTE
24 Chief U.S. District Judge